

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LARRY LEWIS, Plaintiff

V.

NO. 2:92CV032-B-O

WILLIAM JOINER, ET AL, Defendants

O P I N I O N

Plaintiff Larry Lewis brings this pro se complaint pursuant to 42 U.S.C. §1983. The defendants are William Joiner, a county judge in Panola County, Mississippi; Jame Rudd, a deputy sheriff in Panola County; J. Michael Horan, district attorney; William Clayton, an attorney who represented plaintiff in appealing his conviction to the Mississippi Supreme Court; George C. Carlson, a circuit court judge; and Robert M. Ryan, an attorney who represented plaintiff at his trial.

Plaintiff states that defendant Rudd made a criminal complaint against him for allegedly pointing a gun at Louise Butler, plaintiff's common law wife. Plaintiff had a preliminary hearing before defendant Judge Joiner, and was bound over to the grand jury without bail. Plaintiff contends that there was no evidence to support defendant Joiner's action.

Plaintiff was tried for attempting to break and enter the house of Louise Butler and for aggravated assault by pointing and

intending to discharge a shotgun at Ms. Butler. The attempted burglary charge was dismissed, and plaintiff was found guilty of the aggravated assault charge. He was sentenced to 15 years in the Mississippi Department of Corrections, with the last 10 years suspended. He was denied bond pending appeal.

Defendant Judge Carlson presided at this trial, with defendant Horan the prosecutor, and defendant Ryan representing plaintiff. Plaintiff contends that Horan committed perjury at his trial, that he was indicted on the wrong charge, and that the state did not prove the charges. He also alleges that Ryan provided ineffective assistance of counsel at both the preliminary hearing and at trial. Finally, he alleges that Judge Carlson incorrectly instructed the jury, falsely imprisoned him, and improperly denied him bail. For relief, he seeks to be released from prison, for monetary damages, and for the defendants to be prosecuted.

The Court, after reviewing plaintiff's complaint and giving it the liberal construction as required by Haines v. Kerner, 404 U.S. 519 (1972), has come to the following conclusion.

Absolute immunity is a threshold question to be resolved as early in the proceedings as possible. See Siegert v. Gilley, 111 S.Ct. 1789, 1793 (1991). Judicial officers are entitled to absolute immunity from claims for damages arising out of acts performed in the exercise of their judicial functions. Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). The alleged magnitude of

the errors or the mendacity of the acts is irrelevant. Young v. Biggers, 938 F.2d 565, 569 n.5 (5th Cir. 1991). Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions complained of were taken in the complete absence of all jurisdiction. Mireles v. Waco, 112 S.Ct. 286, 288 (1991); see Forrester v. White, 484 U.S. 219, 220-21 (1988). A judge's act are judicial in nature if they are "normally performed by a judge" and the parties affected "dealt with the judge in his judicial capacity." Mireles, supra at 288 (quoting Stump v. Sparkman, 435 U.S. 349, 362 (1978)). Plaintiff does not complain of any actions by Judges Carlson or Joiner that were nonjudicial in nature, and these claims should therefore be dismissed with prejudice as frivolous.

Criminal prosecutors also enjoy absolute immunity for claims for damages asserted under §1983 for actions taken in the presentation of the state's case. Graves, supra at 318. "Acts undertaken by the prosecutor . . . which occur in the course of his role as an advocate for the State, are entitled to the protection of absolute immunity." Buckley v. Fitzsimmons, 113 S.Ct. 2606, 2615 (1993). This broad immunity applies even if the prosecutor is accused of knowingly using perjured testimony. Graves, supra at 318 n.9; see also Brummett v. Camble, 946 F.2d 1178 (5th Cir. 1991), cert. denied, 112 S.Ct. 2323 (1992); Ashelman v. Pope, 793

F.2d 1072 (9th Cir. 1986) (en banc). Plaintiff alleges no facts against District Attorney Horan that would destroy his absolute immunity, so the claims against this defendant should also be dismissed with prejudice.

The only mention about defendant Rudd in the complaint is "Jame Rudd make the complaint said i point a gun at my common wife Louis Bulter . . ." (sic). This does not state a complaint of any sort against Deputy Rudd, certainly not a constitutional one. Consequently, the action against this defendant should be dismissed without prejudice for failure to state a claim.

This leaves as defendants only the two attorneys who represented plaintiff, Mr. Ryan who handled his defense at trial, and Mr. Clayton who apparently represented him on appeal. Although plaintiff's allegations regarding these defendants are somewhat confusing, it appears that he is alleging that they provided ineffective assistance of counsel and conspired with the judicial defendants to violate his constitutional rights by causing him to be convicted and to have the conviction affirmed on appeal.

If proved, these claims would call plaintiff's conviction into question. As such, it cannot proceed under §1983.

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment or for other harm, caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove

that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. §2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under §1983.

Heck v. Humphrey, 114 S.Ct. 2364, 2372 (1994). The court also stated, at 2373-74,

We do not engraft an exhaustion requirement upon §1983, but rather deny the existence of a cause of action. Even a prisoner who has fully exhausted available state remedies has no cause of action under §1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus . . . [A] §1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.

Under Heck, when a state prisoner brings a §1983 action seeking damages, the trial court must first ascertain whether a judgment in favor of the plaintiff in the §1983 action would necessarily imply the invalidity of his conviction or sentence. Id. at 2372. If so, the prisoner must show that his conviction has been "reversed, expunged, invalidated or impugned by the grant of writ of habeas corpus, "id at 2373, in order to state a claim. Dismissal of the §1983 action under 28 U.S.C. §1915(d) is

appropriate because the plaintiff's action has been shown to be legally frivolous.

For the foregoing reasons, the complaint should be dismissed as frivolous. The dismissal will be with prejudice against defendants Carlson, Joiner, and Horan, and without prejudice against defendants Rudd, Clayton, and Ryan.

A final judgment in accordance with this opinion will be entered.

THIS the _____ day of _____, 1994.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT COURT JUDGE